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**Moderator's Overview:**

This document presents a brief overview of recent developments within the Trump Administration's Environmental Protection Agency ("EPA"). It focuses on the importance of Environmental Justice as well as EPA's new initiatives and back-to-basics approach. Finally, the document highlights and provides a summary of several issues and areas of work where EPA is implementing its approach in service of the public.

**I. Environmental Justice**

Environmental justice ("EJ") is the fair treatment and meaningful involvement of all people regardless of race, color, national origin, or income, with respect to the development, implementation, and enforcement of environmental laws, regulations, and policies. EPA has this goal for all communities and persons across this nation. It will be achieved when everyone enjoys: the same degree of protection from environmental and health hazards, and equal access to the decision-making process to have a healthy environment in which to live, learn, and work.<sup>2</sup>

On February 23, 2018, EPA released the Memorandum on EPA's Environmental Justice and Community Revitalization Priorities<sup>3</sup> ("Memorandum"), which outlines EPA's EJ goals and priorities and identifies their alignment with the new Strategic Plan and the Agency's core mission. These goals and priorities include "[a]chiev[ing] measurable environmental outcomes for underserved and overburdened communities in the areas of exposure to lead, access to safe drinking water, reduction of harmful air pollutants and limiting exposure to contamination from hazardous wastes," and "[s]trengthen[ing] the ability of our partner agencies to integrate EJ in their work through enhanced coordination and collaboration with states, tribes and local governments to address EJ concerns" as well as many other initiatives. *Memorandum*, at 1, 2.

**II. EPA Strategic Plan and Initiatives**

The U.S. Environmental Protection Agency's FY 2018 – FY 2022 Strategic Plan<sup>4</sup> emphasizes the Agency's "Back-to-Basic" agenda. The Draft Plan was available for public review and comment until October 31, 2017, and was finalized on February 12, 2018. The agenda set out in this plan has three over-

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<sup>1</sup> For her full biography, please see <https://www.epa.gov/aboutepa/about-administrator-epas-new-england-region-region-1>. The author also acknowledges EPA Region 1 Attorney Cayleigh Eckhardt for her help in preparing the information included in this document.

<sup>2</sup> For more information on EPA's Environmental Justice initiatives, see <https://www.epa.gov/environmentaljustice>.

<sup>3</sup> Available at <https://www.epa.gov/environmentaljustice/memorandum-epas-environmental-justice-and-community-revitalization-priorities>.

<sup>4</sup> This plan can be viewed and downloaded at <https://www.epa.gov/sites/production/files/2018-02/documents/fy-2018-2022-epas-strategic-plan.pdf>.

arching goals which reflect the Administrator's core philosophies: (1) refocus the agency back to its core mission; (2) restore power to the states through cooperative federalism; and (3) lead the agency through improved processes and adhere to the rule of law.

Taken together, these goals are designed to transform the way the Agency does business and more efficiently and effectively delivers human health and environmental results. The Agency's mission of protecting human health and the environment resonates with all Americans and we can all agree that we want our future generations to inherit a cleaner, healthier environment that supports a thriving economy.

### **III. Cooperative Federalism**

On January 22, 2018, Susan Bodine, Assistant Administrator for the Office of Enforcement and Compliance Assurance, issued a Memorandum, entitled, "*Interim OECA Guidance on Enhancing Regional-State Planning and Communication on Compliance Assurance Work in Authorized States.*"<sup>5</sup> The "Guidance is being issued in order to immediately begin the movement toward a more collaborative partnership between the EPA and authorized States, with the expectation that this Interim Guidance will be updated after the Compliance Assurance Collaboration Workgroup has finished its work."

### **IV. Rule of Law and Process**

Throughout 2017, the President issued several Executive Orders that seek to achieve Regulatory Reform throughout the Executive Branch.<sup>6</sup> Executive Order 13771, 82 Fed. Reg. 9339 (Feb. 3, 2017), on Reducing Regulation and Controlling Regulatory Costs, directs all agencies to repeal two existing regulations for each new regulation issued in FY 2017 and thereafter. It further directs agencies that the "total incremental costs of all regulations should be no greater than zero" in FY 2017. For FY 2018 and beyond, the director of the Office of Management and Budget will provide agencies with a total amount of incremental costs that will be allowed.

Then, on March 1, 2017, the President issued Executive Order 13777, 82 Fed. Reg. 12285 (Mar. 1, 2017), on Enforcing the Regulatory Reform Agenda directs federal agencies to establish a Regulatory Reform Task Force (Task Force). One of the duties of the Task Force is to evaluate existing regulations and make recommendations to the agency head regarding their repeal, replacement, or modification. In Response to this Executive Order, Administrator Pruitt issued a Memorandum describing Executive Order 13777, EPA's Regulatory Reform Task Force, and related activities. Memorandum from Administrator Pruitt: *Executive Order 13777: Enforcing the Regulatory Reform Agenda* (Mar. 24, 2017).<sup>7</sup>

Furthermore, the President issued Executive Order 13783, 82 Fed. Reg. 16093 (Mar. 31, 2017), on March 31, 2017, which focuses on Promoting Energy Independence and Economic Growth. The Executive Order directs EPA to review the Clean Power Plan, related rules, and the NSPS for Oil and

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<sup>5</sup> Available at <https://www.epa.gov/sites/production/files/2018-01/documents/guidance-enhancingregionalstatecommunicationoncompliance.pdf>.

<sup>6</sup> For more information on these Executive Orders and EPA's actions related to regulatory reform, please see <https://www.epa.gov/laws-regulations/regulatory-reform>.

<sup>7</sup> See <https://www.epa.gov/laws-regulations/memorandum-executive-order-13777-enforcing-regulatory-reform-agenda>.

Gas, and further directs all agencies to review existing regulations, orders, guidance documents and policies that potentially burden the development or use of domestically produced energy resources.

## **V. Implementing the Back to Basics Agenda**

### **a. Clean Air Act**

Clean air remains critical and is an important part of fulfilling the Agency's goal of delivering real results to provide Americans with clean air, land, and water, and ensure chemical safety. As EPA attempts to advance its clean air goals across different parts of the country, the Agency faces many regional and state specific endeavors and issues. Below are two examples of New England state efforts related to clean air.

#### **i. Connecticut 126 Petition**

The Connecticut Department of Energy and Environmental Protection submitted a petition to EPA under section 126 of the Clean Air Act. The petition requests that EPA make a finding that the Brunner Island Steam Electric Station in York County, Pennsylvania, is emitting air pollutants that significantly contribute to nonattainment or interfere with maintenance of the 2008 ozone national ambient air quality standards (NAAQS) in Connecticut.

On February 7, 2018, the U.S. District Court for the District of Connecticut instructed EPA to hold a public hearing and take final action on this petition by April 8, 2018. Then, on February 22, 2018, EPA published in the Federal Register a Notice of Proposed Action on the 126 Petition. 83 Fed. Reg. 7710 (Feb. 22, 2018). EPA is proposing to deny the petition. The Agency has concluded that Brunner Island does not currently emit, nor is it expected to emit, pollution in violation of the good neighbor provision for the 2008 ozone standards. The facility has already implemented a cost effective strategy for reducing NO<sub>x</sub> emissions – one that Connecticut identified in its petition. EPA will accept comment on this proposed action through March 26, 2018. In addition, EPA will hold a public hearing on this proposed rule on February 23, 2018, at the at the EPA Headquarters offices, William Jefferson Clinton East Building, Room 1153, 1201 Constitution Avenue, NW, Washington, DC 20004.<sup>8</sup>

#### **ii. 176A Petition**

On October 27, 2017, the EPA denied a petition from Connecticut, Delaware, Maryland, Massachusetts, New Hampshire, New York, Pennsylvania, Rhode Island and Vermont under section 176A(a) of the Clean Air Act (CAA), which asks EPA to add Illinois, Indiana, Kentucky, Michigan, North Carolina, Ohio, Tennessee, West Virginia and a portion of Virginia to the Ozone Transport Region (OTR), and alleges that these states significantly contribute to violations of the 2008 ozone national ambient air quality standards (NAAQS) in the OTR.<sup>9</sup>

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<sup>8</sup> For more information on the petition, the Proposed Action, and the public hearing, please *see* <https://www.epa.gov/ozone-pollution/connecticut-126-petition>.

<sup>9</sup> To read the petition, *see* [https://www.epa.gov/sites/production/files/2016-04/documents/states\\_noi\\_04182016.pdf](https://www.epa.gov/sites/production/files/2016-04/documents/states_noi_04182016.pdf). For more information, *see also* [https://www.epa.gov/sites/production/files/2016-10/documents/courtlink\\_docket\\_us\\_dis\\_nysd\\_1:16cv7827\\_10.06.2016.pdf](https://www.epa.gov/sites/production/files/2016-10/documents/courtlink_docket_us_dis_nysd_1:16cv7827_10.06.2016.pdf) and [https://www.epa.gov/sites/production/files/2017-01/documents/176a\\_petition\\_fact\\_sheet.pdf](https://www.epa.gov/sites/production/files/2017-01/documents/176a_petition_fact_sheet.pdf).

## **b. Clean Land**

On May 22, 2017, Administrator Scott Pruitt issued a Memorandum<sup>10</sup> outlining actions for prioritizing the Superfund program, reviewing the remedy selection process, and establishing a task force (the Superfund Task Force) to provide recommendations on an expedited timeframe on how the agency can restructure the cleanup process.

Then, on July 25, 2017, the Superfund Task Force released their report to EPA Administrator Scott Pruitt, providing 42 specific and detailed recommendations to streamline and improve the Superfund program.<sup>11</sup> Administrator Pruitt also signed a directive<sup>12</sup> to leaders across the Agency of 11 specific actions that should be implemented right away, with renewed focus, including identification, within 60 days, of the sites where the risk of human exposure is not fully controlled.

EPA developed the Redevelopment Focus List<sup>13</sup> in response to the Superfund Task Force Recommendations described above. The Redevelopment Focus List is an initial list of Superfund National Priorities List sites with the greatest expected redevelopment and commercial potential. EPA will focus redevelopment training, tools and resources towards the sites on this list. EPA will work with developers interested in reusing these and other Superfund sites; will identify potentially interested businesses and industries to keep them apprised of redevelopment opportunities; and will continue to engage with community groups in cleanup and redevelopment activities to promote the successful redevelopment and revitalization of their communities. As of January 17, 2018, the List includes 31 sites.

## **c. Lead and Copper Rule**

On February 15, 2018, Administrator Scott Pruitt hosted fellow Cabinet members and other key senior leaders to outline a federal strategy to reduce childhood lead exposure and associated health risks.<sup>14</sup>

“Lead exposure poses a significant health threat to hundreds of thousands of American children,” said EPA Administrator Scott Pruitt. “By refocusing Agency efforts, we can work with our government partners to develop solutions that address lead exposure and improve health outcomes for children.”

Administrator Pruitt was joined by members or their designees of the President’s Task Force on Environmental Health Risks and Safety Risks to Children (Task Force), and other principals to collaborate on a clear direction in the development and implementation of a new Federal Strategy to Reduce Childhood Lead Exposures and Eliminate Associated Health Impacts. The Task Force is co-chaired by Administrator Pruitt and Health and Human Services (HHS) Secretary Alex Azar. At the meeting, attendees agreed to: make addressing childhood lead exposure a priority for Task Force departments and agencies; five goals that frame the new Federal Strategy to Reduce Childhood Lead Exposures and Eliminate Associated Health Impacts; set an aggressive, near-term timeline for the Task

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<sup>10</sup> See <https://www.epa.gov/superfund/prioritizing-superfund-program-memo-epa-administrator-scott-pruitt-agency-management>.

<sup>11</sup> The recommendations are found at <https://www.epa.gov/superfund/superfund-task-force-recommendations>. See also <https://www.epa.gov/newsreleases/epa-announces-superfund-task-force-recommendations>.

<sup>12</sup> <https://www.epa.gov/superfund/administrator-pruitts-memo-regarding-receipt-superfund-task-force-report-and-next-steps>.

<sup>13</sup> The list is available at <https://www.epa.gov/superfund-redevelopment-initiative/superfund-redevelopment-focus-list>.

<sup>14</sup> For more information on this meeting, see <https://www.epa.gov/newsreleases/epa-administrator-scott-pruitt-hosts-nations-leaders-discuss-efforts-reduce-childhood-0>.

Force to complete its work to draft the strategy; and, schedule a follow-up principals meeting or event to issue the federal strategy and discuss next steps.

In addition, consistent with E.O. 13132, EPA is consulting with state and local government officials, or their representatives during the development of the proposed revisions to Lead and Copper Rule. On December 14, 2017, EPA sent out a letter<sup>15</sup> seeking input from state and local governments on proposed Lead and Copper Rule revisions and also inviting those governments to a January 8, 2018 meeting on the potential revisions.

#### **d. Clean Water**

On August 29, 2015, the Environmental Protection Agency (EPA) and the U.S. Army Corps of Engineers (Corps) published a final rule (“WOTUS”)<sup>16</sup> defining the scope of waters protected under the Clean Water Act (CWA or the Act). Following appeals by multiple parties, the U.S. Court of Appeals for the Sixth Circuit, on October 9, 2015, stayed the Rule nationwide pending further action of the court. The Supreme reviewed the question of whether the court of appeals has original jurisdiction to review challenges to the 2015 Rule (*see* discussion of *National Association of Manufacturers v. Department of Defense* below).

In response to the stay, EPA and the Corps resumed nationwide use of the agencies’ prior regulations defining the term “waters of the United States.” The definition currently in effect is the definition promulgated in 1986/1988, implemented consistent with subsequent Supreme Court decisions and guidance documents.

On February 28, 2017, President Trump issued an Executive Order directing EPA and the Corps to review the WOTUS Rule and publish for notice and comment a proposed rule rescinding or revising the rule. Accordingly, on June 27, 2017, the agencies proposed to rescind the Rule and re-codify the regulatory text that existed prior to 2015 defining “waters of the United States.” The public comment period on that proposal closed on September 27, 2017. This action would, when finalized, provide regulatory certainty pending a second rulemaking that the agencies plan in 2018 to replace the approach in the 2015 Rule.

Additionally, on November 22, 2017, the agencies proposed to add an applicability date to the 2015 WOTUS Rule and plan to move quickly to take final action in early 2018. The agencies proposed that the 2015 rule would not be applicable until two years after the action is finalized and published in the Federal Register. The agencies intend to maintain the status quo by adding the applicability date and thus provide continuity and regulatory certainty for regulated entities, states, tribes, agency staff, and the public while the agencies consider possible revisions to the 2015 Rule. Then, on February 6, 2018, EPA

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<sup>15</sup> The letter can be found at [https://www.epa.gov/sites/production/files/2017-12/documents/lcr\\_federalism\\_consultation\\_letter.signed.12\\_14\\_17.pdf](https://www.epa.gov/sites/production/files/2017-12/documents/lcr_federalism_consultation_letter.signed.12_14_17.pdf), and the slides developed for the January 8, 2018 meeting are available at [https://www.epa.gov/sites/production/files/2018-01/documents/eo\\_13132\\_federalism\\_consultation\\_presentation-final\\_1.9.2018.pdf](https://www.epa.gov/sites/production/files/2018-01/documents/eo_13132_federalism_consultation_presentation-final_1.9.2018.pdf). *See also*, <https://www.epa.gov/dwstandardsregulations/lcr-federalism-consultation>.

<sup>16</sup> For more information on WOTUS and the rulemaking process, *see* <https://www.epa.gov/wotus-rule>. *See also*, <https://www.epa.gov/wotus-rule/rulemaking-process>.

and U.S. Department of the Army (the agencies) finalized the rule<sup>17</sup> adding an applicability date to the 2015 Rule defining “waters of the United States.” The 2015 Rule will not be applicable until February 6, 2020.

In addition, on January 22, 2018, the Supreme Court issued a unanimous decision,<sup>18</sup> in *National Association of Manufacturers v. Department of Defense, et al.*, No. 16–299, in which it found that the 6th Circuit Court of Appeals lacked jurisdiction to review EPA’s rule revising the definition of “waters of the United States” (WOTUS rule). The Court specifically held that “the WOTUS Rule falls outside the ambit of §1369(b)(1)” and as a result “challenges to the Rule must be filed in federal district courts.” The Court “reverse[d] the judgment of the Court of Appeals and remand[ed] the case with instructions to dismiss the petitions for review for lack of jurisdiction.”

#### **e. Nutrient Pollution**

EPA is working diligently with its partners to combat nitrogen and phosphorus pollution (also called “nutrient” pollution) in U.S. water bodies.<sup>19</sup> Nutrient pollution continues to be a priority in Region 1, as it is related to several areas in New England, including the Great Bay Estuary, Lake Champlain, and Long Island Sound.

#### **f. Emerging Contaminants**

In December of 2017, EPA announced<sup>20</sup> a cross-agency effort to address per and polyfluoroalkyl Substances (PFAS). PFAS, which includes PFOA, PFOS and GenX, are a diverse group of compounds resistant to heat, water, and oil that are persistent in the environment and resist degradation.

Through this effort, EPA will enhance coordination among states, tribes, and federal partners and researchers will collaborate to identify new methods for measuring PFAS in the environment, learn more about the toxicity of these chemicals and exposure pathways, and gather information on treatment and disposal. EPA Region 1 New England also has a workgroup of our state partners to ensure that information and experience on PFAS is exchanged regularly, and we are providing analytical and technical assistance to states and communities.

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<sup>17</sup> The Final Rule was signed on January 31, 2018, and was published in the Federal Register on February 6, 2018. 83 Fed. Reg. 5200 (Feb. 6, 2018); *see also* <https://www.epa.gov/wotus-rule/final-rule-definition-waters-united-states-addition-applicability-date-2015-clean-water>.

<sup>18</sup> [https://www.supremecourt.gov/opinions/17pdf/16-299\\_8nk0.pdf](https://www.supremecourt.gov/opinions/17pdf/16-299_8nk0.pdf).

<sup>19</sup> *See* <https://www.epa.gov/nutrientpollution>.

<sup>20</sup> To view the announcement, visit <https://www.epa.gov/newsreleases/epa-launches-cross-agency-effort-address-pfas>. For additional information, see <https://www.epa.gov/pfas>; Fact Sheet on EPA’s PFAS Efforts, available at <https://www.epa.gov/pfas/fact-sheet-protecting-public-health-and-addressing-pfas-chemicals>; <https://www.epa.gov/pfas/and-polyfluoroalkyl-substances-pfas-what-epa-doing>; EPA’s PFAS Health Advisory Fact Sheet, available at [https://www.epa.gov/sites/production/files/2016-06/documents/drinkingwaterhealthadvisories\\_pfoa\\_pfos\\_updated\\_5.31.16.pdf](https://www.epa.gov/sites/production/files/2016-06/documents/drinkingwaterhealthadvisories_pfoa_pfos_updated_5.31.16.pdf).

### **g. Infrastructure**

On August 15, 2017, the President signed Executive Order 13807, entitled, *Establishing Discipline and Accountability in the Environmental Review and Permitting Process for Infrastructure Projects*. E.O. 13807 of Aug. 15, 2017 (published in the Federal Register as 82 Fed. Reg. 40463 (Aug. 24, 2017)).<sup>21</sup> The Executive Order seeks to “ensure that the Federal environmental review and permitting process for infrastructure projects is coordinated, predictable, and transparent.” 82 Fed. Reg. at 40463.

In addition, on February 12, 2018, the Whitehouse released its FY 2019 Budget<sup>22</sup> and also released its accompanying Infrastructure Plan.<sup>23</sup> These two documents outline the Whitehouse’s focus on infrastructure and streamlined environmental permitting.<sup>24</sup>

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<sup>21</sup> Available at <https://www.federalregister.gov/documents/2017/08/24/2017-18134/establishing-discipline-and-accountability-in-the-environmental-review-and-permitting-process-for>

<sup>22</sup> Available at <https://www.whitehouse.gov/wp-content/uploads/2018/02/budget-fy2019.pdf>.

<sup>23</sup> Available at <https://www.whitehouse.gov/wp-content/uploads/2018/02/INFRASTRUCTURE-211.pdf>

<sup>24</sup> For a summary of the main points from the budget and infrastructure plan, see [https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/fact\\_sheets/2018%20Budget%20Fact%20Sheet\\_Infrastructure%20Initiative.pdf](https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/budget/fy2018/fact_sheets/2018%20Budget%20Fact%20Sheet_Infrastructure%20Initiative.pdf).